

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

TYSON J. HORNER,

Defendant.

CASE NO: 2:22-CR-0060-TOR

ORDER GRANTING IN PART,
DENYING IN PART DEFENDANT'S
MOTION TO CONTINUE
SENTENCING

BEFORE THE COURT is Defendant's Motion to Continue Sentencing.

ECF No. 56. The motion was submitted for hearing without oral argument.

Having reviewed the file and the records therein, the Court is fully informed.

On February 1, 2023, Defendant appeared before the Court and entered a plea of guilty to the Indictment filed on May 17, 2022, charging him with Possession with Intent to Distribute 400 Grams of Fentanyl, in violation of 21 U.S.C. § 841. At the conclusion of the hearing, the Court accepted Defendant's guilty plea and set sentencing for May 3, 2023. He now moves, unopposed by the government, to continue the hearing date to November 2023 and all hearing related

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1 deadlines commensurate with the new hearing date. In support of his motion,
2 Defendant explains he needs additional time to resolve a dispute in the PSIR
3 involving his criminal history, resolve a Guideline issue, and to request records
4 from CPS. The Court finds good cause to continue the hearing to allow Defendant
5 time to resolve the PSIR issue and request his CPS records, but is not inclined to
6 set the hearing out an additional six months while the Sentencing Commission
7 decides whether or not to adopt a proposed amendment which may eliminate the
8 two-point increase for committing an offense while under a criminal justice
9 sentence. Accordingly, the Court will continue the hearing for approximately 45
10 days.

11 **IT IS HEREBY ORDERED:**

12 1. The sentencing hearing set for May 3, 2023, is vacated and continued to
13 **June 15, 2023, at 8:30 a.m.**, in Spokane Courtroom 902. Absent truly exigent
14 circumstances, the Court will not consider another request for a continuance of
15 sentencing unless: (1) the request is made by written motion, (2) in accordance
16 with LCivR 7, and (3) the motion and supporting declaration are filed at least
17 seven (7) days before the scheduled sentencing hearing.

18 2. The Defendant shall remain released to pretrial supervision pursuant to
19 the conditions of release previously imposed in this matter, unless his pretrial
20 release is revoked at the Pretrial Release Revocation Hearing scheduled for April

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25, 2023. ECF No. 55. **If a sentence of incarceration is imposed, and Defendant isn't already in custody, he shall be taken into custody at the time of sentencing.**

3. The United States Probation Office has prepared and disclosed the draft Presentence Investigation Report (PSIR) pursuant to Fed. R. Crim. P. 32.

4. Not later than **May 18, 2023**, counsel shall communicate in writing to the probation office (and opposing counsel) any objections they may have as to legal and factual errors or omissions; sentencing classifications; sentencing guideline ranges; and policy statements contained in or omitted from the report. If an objection is filed, the probation officer shall conduct such additional investigation as is necessary to assess the merits of the objection.

5. The probation officer shall submit the final Presentence Investigation Report to the Court by **June 1, 2023**. The report shall be accompanied by an addendum setting forth any objections counsel may have made, including those that have not been resolved, together with the officer's comments and recommendations thereon.

6. Not later than **June 1, 2023**, counsel shall file and serve all motions and memoranda pertaining to Defendant's sentence, including departures and variances, and sentencing recommendations. **FAILURE TO FILE AND SERVE**

SENTENCING MATERIAL, TO INCLUDE MOTIONS OR MEMORANDA

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**FOR UPWARD OR DOWNWARD DEPARTURE AND VARIANCES, BY
THIS DATE WILL BE DEEMED A WAIVER OF THE RIGHT TO DO SO.**

7. Not later than **June 8, 2023**, the opposing party shall file and serve its response limited to no more than seven (7) pages.

8. If Defendant intends to qualify for the safety valve, the parties must schedule a meeting to conduct a safety valve interview to determine if the Defendant has met the requirements of U.S.S.G. § 5C1.2(a)(5) no later than **June 1, 2023**.

9. If either party intends to call witnesses or proffer exhibits at sentencing, witness and exhibit lists must be exchanged by the parties and provided to the Court no later than **June 8, 2023**.

IT IS SO ORDERED. The District Court Clerk is hereby directed to enter this Order and provide copies to counsel, the United States Probation Office, and the United States Marshal's Service.

DATED April 6, 2023.



A handwritten signature in blue ink that reads "Thomas O. Rice".

THOMAS O. RICE
United States District Judge